

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

Petitioner,

v.

RICK HILL, Warden,

Respondent.

Nos. C 11-05121 CW (PR)

C 11-05389 CW (PR)

ORDER DISMISSING PETITIONS;
GRANTING LEAVE TO PROCEED IN
FORMA PAUPERIS; DIRECTING CLERK
OF THE COURT TO TERMINATE ALL
PENDING MOTIONS

Petitioner, a state prisoner, filed the present pro se petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 1998 conviction for attempted murder. Petitioner previously challenged the same conviction in a habeas petition that was denied on the merits. See Ellis v. Roe, Case No. C 01-3141 MMC (PR). Since that denial, this Court has denied, under 28 U.S.C. § 2244, Petitioner's previous attempt to present a renewed challenge to his conviction without prior approval from the Ninth Circuit. See Ellis v. Hill, Case No. C 09-00351 CW (PR). Specifically, a second or successive petition containing previously raised or new claims may not be filed in the district court unless the petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Because Petitioner here has not obtained prior approval from the Ninth Circuit for this Court to consider his renewed challenge to his conviction in the above-titled petitions, the petitions are DISMISSED without prejudice to Petitioner's filing a petition in

1 this Court if he obtains the necessary order from the Ninth
2 Circuit.¹

3 In light of Petitioner's lack of funds, his applications to
4 proceed in forma pauperis are GRANTED.

5 CONCLUSION

6 For the reasons stated above, the above-titled petitions are
7 DISMISSED without prejudice.

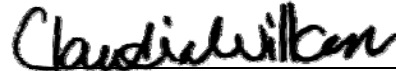
8 Petitioner's applications to proceed in forma pauperis are
9 GRANTED.

10 The Clerk of the Court shall terminate all pending motions in
11 the present actions, enter judgment and close the files.

12 This Order terminates Docket nos. 2 and 3 in Case no. C 11-
13 05121 CW (PR), and Docket nos. 2 and 3 in Case no. C 11-05389.

14 IT IS SO ORDERED.

15 Dated: 11/17/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

16
17
18
19
20
21
22
23
24
25 ¹The gatekeeping function performed by a court of appeals applies
26 only to a second or successive petition filed in the district court.
27 See Felker v. Turpin, 518 U.S. 651, 662 (1996). Petitioner still may
28 file an original successive habeas petition in the United States
Supreme Court, in which case the court of appeals' permission to file
is not needed. See id. at 660-61.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

Plaintiff,

v.

RICK HILL et al,

Defendant.

Case Number: CV11-05121 CW
CV11-05389 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 17, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Ellis P35156
CSP - Old Folsom
P.O. Box 715071
Represa, CA 95671

Dated: November 17, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California